

EXHIBIT ONE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF NEW YORK,

Plaintiff/Petitioner,

- against -
SWING 46,

Index No. 452761/2024

Defendant/Respondent.

NOTICE OF ELECTRONIC FILING
(Mandatory Case)
(Uniform Rule § 202.5-bb)

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- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and
- 2) You are a Defendant/Respondent (a party) in this case.

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Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

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**Information for Attorneys
(E-filing is Mandatory for Attorneys)**

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1) immediately record his or her representation within the e-filed matter on the NYSCEF site www.nycourts.gov/efile; or

2) file the Notice of Opt-Out form with the clerk of the court where this action is pending and serve on all parties. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the knowledge to operate such equipment. [Section 202.5-bb(e)]

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Dated: OCTOBER 11, 2024

Issac Cwibeker

Name

Wilson, Elser, Moskowitz, Edelman & Dicker LLP

Firm Name

1133 Westchester Avenue

White Plains, NY 10604

Address

(914) 872-7384

Phone

Issac.Cwibeker@wilsonelser.com
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To:

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p>CITY OF NEW YORK, Plaintiff,</p> <p>v. SWING 46, Defendant.</p>	<p>X Index No. SUMMONS Date filed: Plaintiff designates New York County as the place of trial.</p>
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TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, 1133 Westchester Avenue, White Plains, New York, 10604, Attn: Issac Cwibeker, within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Civil Practice Law and Rules §503(a)

Dated: September 23, 2024

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Special Assistant Corporation Counsel of the City of New York
Attorneys for the City of New York
1133 Westchester Avenue
White Plains, New York 10604
Attn: William J. Cortellessa, Esq.
Attn: Joel D. Vago, Esq.
Attn: Issac Cwibeker, Esq.
Tel. No.: 914-872-7384
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To: SWING 46
349 WEST 46 STREET
NEW YORK, NY 10036

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF NEW YORK,

Plaintiff,

v.

SWING 46,

Defendant.

VERIFIED COMPLAINT

Index No.

Plaintiff, City of New York ("City"), by its attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, Special Assistant Corporation Counsel for the City of New York, for its complaint against defendant SWING 46, on personal knowledge as to facts relating to the City of New York and on information and belief as to other allegations, respectfully alleges as follows:

1. Plaintiff City of New York was and is a municipal corporation organized and existing pursuant to the laws of the State of New York.
2. The New York City Office of Administrative Trials and Hearings ("OATH") was and is an agency of the City and maintains its principal place of business located at 100 Church Street, New York, New York.
3. Pursuant to New York City Charter section 1049-a and § 6-01 of Title 48 of the Rules of the City of New York ("RCNY"), the Environmental Control Board ("ECB") was and is established within OATH as part of the OATH Hearings Division. ECB maintains its principal office and place of business at 66 John Street, New York, New York 10038.
4. Swing 46 (the "Defendant") was and is a natural person and resident of the State of New York with an address of 349 West 46th Street, New York, NY 10036.

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5. Venue is proper in New York County pursuant to Civil Practice Law & Rules §503(a).

6. A Summons and Commissioner's Order, Summons Number 000289118N, dated 11/10/2022 issued by the New York City Bureau of Environmental Compliance - DEP was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 06/27/2023.

7. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 07/05/2023, imposing a penalty against Defendant in the amount of \$2,275.00.

8. A Summons and Commissioner's Order, Summons Number 000600438I, dated 11/30/2022 issued by the New York City Bureau of Environmental Compliance - DEP was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 08/14/2023.

9. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 08/21/2023, imposing a penalty against Defendant in the amount of \$2,275.00.

10. A Summons and Commissioner's Order, Summons Number 0216401177, dated 09/17/2022 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 09/13/2023.

11. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 09/20/2023, imposing a penalty against Defendant in the amount of \$1,750.00.

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12. A Summons and Commissioner's Order, Summons Number 000600396M, dated 11/25/2022 issued by the New York City Bureau of Environmental Compliance - DEP was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 09/13/2023.

13. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 09/20/2023, imposing a penalty against Defendant in the amount of \$2,275.00.

14. A Summons and Commissioner's Order, Summons Number 000600695M, dated 12/16/2022 issued by the New York City Bureau of Environmental Compliance - DEP was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 10/25/2023.

15. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 11/01/2023, imposing a penalty against Defendant in the amount of \$2,275.00.

16. A Summons and Commissioner's Order, Summons Number 0216427119, dated 02/21/2023 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 11/28/2023.

17. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/05/2023, imposing a penalty against Defendant in the amount of \$5,250.00.

18. A Summons and Commissioner's Order, Summons Number 0216427494, dated 02/23/2023 issued by the New York City Miscellaneous Agencies was served on Defendant in

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accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 11/28/2023.

19. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/05/2023, imposing a penalty against Defendant in the amount of \$5,250.00.

20. A Summons and Commissioner's Order, Summons Number 0216418108, dated 03/10/2023 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 11/28/2023.

21. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/05/2023, imposing a penalty against Defendant in the amount of \$5,250.00.

22. A Summons and Commissioner's Order, Summons Number 0216418117, dated 03/16/2023 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 11/28/2023.

23. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/05/2023, imposing a penalty against Defendant in the amount of \$5,250.00.

24. A Summons and Commissioner's Order, Summons Number 0216418126, dated 03/22/2023 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 11/28/2023.

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25. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/05/2023, imposing a penalty against Defendant in the amount of \$5,250.00.

26. A Summons and Commissioner's Order, Summons Number 0216393386, dated 10/11/2022 issued by the New York City Miscellaneous Agencies was served on Defendant in accordance with the rules of that Department and directed Defendant to appear for a hearing before the OATH Hearings Division on 12/11/2023.

27. In accordance with 48 RCNY § 6-17(c)(3), the Environmental Control Board adopted the decision rendered by the OATH Hearings Division on 12/18/2023, imposing a penalty against Defendant in the amount of \$3,500.00.

28. The Defendant failed to appear at the hearings.

29. Pursuant to New York City Charter §1049-a(d)(1)(d), Defendant's failure to appear "shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering default decision and order imposing a penalty in the maximum amount prescribed under law for the violation charged."

30. OATH Hearings Division sent Defendant a copy of its decisions by first class mail. *tp*

31. No part of the penalty has been paid although due and duly demanded.

32. In accordance with 48 RCNY § 6-19(c), Defendant's time to seek to an administrative appeal of the hearing decision has expired, thereby rendering the 07/05/2023, 08/21/2023, 09/20/2023, 11/01/2023, 12/05/2023, and 12/18/2023 decisions the Environmental Control Board's final determination on the matter. By this action, the City seeks to enforce the penalty, as authorized by New York City Charter § 1049-a(d)(3).

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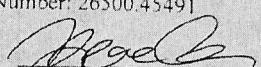
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WHEREFORE, the City demands judgment against the Defendant in the amount of the penalty imposed, for the sum of \$40,600.00, costs and disbursements of this action, and such other relief as this Court may deem just and proper.

Dated: September 23, 2024

Wilson, Elser, Moskowitz, Edelman & Dicker LLP
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By:



William J. Cortellessa
Joel D. Vago
Issac Cwibeker
As Special Assistant Corporation Counsel

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VERIFICATION

STATE OF NEW YORK)
SS.,
COUNTY OF WESTCHESTER)

Issac Cwibeker, being duly sworn, deposes and says that he is of counsel to the firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, Special Assistant Corporation Counsel to the office of Muriel Goode Trifant, Acting Corporation Counsel of the City of New York, that the City of New York is the plaintiff in the within action; that the allegations in the Complaint are true to his knowledge, except as to those matters alleged upon information and belief; that the matters alleged therein upon information and belief, he believes to be true; and that the basis of his knowledge is the books and records of the plaintiff and/or statements made to him by officers or employees thereof. This verification is not made by the plaintiff because the plaintiff is a municipal corporation.

Issac Cwibeker
Special Assistant Corporation Counsel

I affirm on September 23, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Isaac Cwibeker
Special Assistant Corporation Counsel

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